

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA

-vs-

**Case No. 3:-04-cr-132
Also 3:09-cv-373
Judge Thomas M. Rose**

ASMED ESCARENO

**ENTRY AND ORDER OVERRULING ESCARENO'S OBJECTIONS (Doc. #286)
TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS
REGARDING ESCARENO'S MOTION TO VACATE; ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (doc. #283) IN
ITS ENTIRETY; OVERRULING ESCARENO'S MOTION TO VACATE;
DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS* AND ANY REQUESTED
CERTIFICATE OF APPEALABILITY AND TERMINATING THE CIVIL CASE**

Now before the Court is a Motion To Vacate filed by Asmed Escareno ("Escareno") pursuant to 28 U.S.C. § 2255. The time has run and the Government has not responded to Escareno's Objections. This matter is, therefore, ripe for decision.

The Magistrate Judge finds that Escareno has waived his right to file a § 2255 motion and that all of his claims are without merit. The Magistrate Judge recommends that Escareno's Motion To Vacate be overruled, that Escareno be denied leave to appeal *in forma pauperis* and that any requested certificate of appealability should be denied.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Escareno's Objections to the Magistrate Judge's Report and Recommendations regarding Escareno's Motion To Vacate are not well-taken, and they are hereby OVERRULED. Further, the Report and Recommendations is adopted in its entirety.

Escareno's Motion To Vacate is OVERRULED. Further, Escareno is denied leave to appeal *in forma pauperis* and any requested certificate of appealability.

DONE and **ORDERED** in Dayton, Ohio on this Tenth Day of February, 2011.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

United States Attorney
Asmed Escareno at his last known address of record